

“Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act.”

On January 28, 2020, HUD issued FHEO Notice: FHEO-2020-01 (the “New Guidance”) entitled “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act.”

The New Guidance clarifies that there are two types of assistance animals:

- (1) Service Animals – as defined under the Americans with Disabilities Act, “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”
- (2) Support Animals – as defined by HUD, “animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.”

Regarding support animals, HUD further distinguishes between common household animals and other animals:

- (a) Common household animals include “a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure.”
- (b) Animals not considered common household animals include “reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals.”

If the individual requesting a support animal has provided information confirming a disability-related need and the proposed animal is a common household animal, then under the New Guidance the accommodation should be granted.

If, however, the individual is requesting a “unique animal,” i.e. an animal that is not a common household animal, the requestor “has the **substantial burden** of demonstrating a disability-related therapeutic need for the **specific** animal or the specific type of animal” (emphasis added).

HUD further notes that a reasonable accommodation for an assistance animal may be denied “if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal.”

HUD clarifies that persons with disabilities may request a reasonable accommodation for an assistance animal “either before or after acquiring the assistance animal” and may make such

request “after a housing provider seeks to terminate the resident’s lease or tenancy because of the animal’s presence.” HUD further clarifies that housing providers “may not require a health care professional to use a specific form (including [the New Guidance]), to provide notarized statements, to make statements under penalty of perjury, or to provide an individual’s diagnosis or other detailed information about a person’s physical or mental impairments.”

The New Guidance includes a section on documentation best practices as well as an appendix of commonly asked questions..

The New Guidance replaces FHEO Notice: FHEO-2013-01 entitled “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs.” HUD notes, however, that the New Guidance should still be read in conjunction with the “Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act” issued on May 14, 2004 (<https://www.hud.gov/sites/documents/huddojstatement.pdf>).